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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
SAN FRANCISCO, CALIFORNIA

In the Matter of:

Arysta LifeScience North
America, LLC,

Respondent.

)
)
) Docket No. FIFRA-09-2020-**0026**
)
) CONSENT AGREEMENT AND FINAL
) ORDER PURSUANT TO
) 40 C.F.R. §§ 22.13 AND 22.18
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)
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I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA"), and Arysta LifeScience North America, LLC ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action instituted pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA" or "the Act"), as amended, 7

U.S.C. §§136 et seq., for the assessment of a civil administrative penalty against Respondent for violation of Section 12 of the Act.

2. Complainant is the Manager of the Toxics Section of the Enforcement and Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.
3. Respondent is a California corporation that imported pesticide products through the State of California.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Section 17(c) of FIFRA and regulations promulgated at 19 C.F.R. Part 12 pursuant to Section 17(e) of FIFRA by the Secretary of the Treasury in consultation with the EPA Administrator govern the importation of pesticides into the United States.
5. 19 C.F.R. §12.111 provides that "[c]ertain imported pesticides are required to be registered under the provisions of section 3 of the Act . . . before being permitted entry into the United States..."
6. 19 C.F.R. §12.112 provides that "[a]n importer or the importer's agent desiring to import pesticides or devices into the United States must submit to the Administrator, prior to the arrival of the shipment in the United States, a Notice of Arrival of Pesticides and Devices. . . ."
7. Section 2(s) of FIFRA, 7 U.S.C. §136(s), defines a "person" as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
8. Section 2(t) of FIFRA, 7 U.S.C. §136(t), defines a "pest" as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other living

microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under 7 U.S.C. §136 w(c)(1).

9. Section 2(u) of FIFRA, 7 U.S.C. §136(u), defines a "pesticide," in part, as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
10. Section 2(gg) of FIFRA, 7 U.S.C. §136(gg), defines the term "distribute or sell" to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.
11. Section 12 (a)(1)(E) of FIFRA, 7 U.S.C. §136j(a)(1)(E), provides that it shall be unlawful for any person to distribute or sell to any person a pesticide which is adulterated or misbranded.
12. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. §136(q)(1)(A), states a pesticide is misbranded if "its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular."
13. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. §136(q)(1)(F), states that a pesticide is misbranded if "the labeling accompanying it does not contain directions for use which is necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 136a(d) of FIFRA, are adequate to protect health and the environment.
14. The Administrator of EPA may assess a civil penalty of up to \$20,288 against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA for each offense that occurred after November 2, 2015.

See Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1); 40 C.F.R. Part 19; and the Civil Monetary Penalty Inflation Adjustment Rule at 85 Fed. Reg. 1751 (January 13, 2020).

C. ALLEGATIONS

15. At all times relevant to this CAFO, Respondent was a corporation and therefore a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. §136(s).
16. On or about October 2, 2019, Respondent submitted to the U.S. Department of Homeland Security, Bureau of Customs and Border Protection ("CBP") an alternative to the Notice of Arrival through CBP's Automated Commercial Environment ("ACE") system under entry number 916-40159140 for an import shipment of 840 bags of "ENDORSE Water Dispersible Granules" ("ENDORSE") from Japan.
17. Respondent is the importer of record of the shipment of 840 bags of "ENDORSE."
18. The import shipment of 840 bags of "ENDORSE" associated with entry number 916-40159140 entered the United States at the Port of Los Angeles, California on or about October 2, 2019.
19. "ENDORSE" is a "pesticide," as defined at Section 2(u) of FIFRA, 7 U.S.C. §136(u). The EPA Registration Number for "ENDORSE" is 68173-3.
20. The import shipment of the 840 bags of "ENDORSE" through the Port of Los Angeles, California on or about October 2, 2019 constitutes a "distribution or sale" of "ENDORSE," as defined at Section 2(gg) of FIFRA, 7 U.S.C. §136(gg).
21. As the importer of the shipment of 840 bags of "ENDORSE" and by doing business in the United States, Respondent is subject to the requirements of FIFRA and its implementing regulations.

22. The labeling on the 840 bags of "ENDORSE" that Respondent imported on or about October 2, 2019 contained the following language: "See Accompanying Shipping Documents for Complete Label."
23. The 840 bags of "ENDORSE" that Respondent imported on or about October 2, 2019 did not have accompanying shipping documents that provided a complete label.
24. In addition, the labeling for the 840 bags of "ENDORSE" that Respondent imported on or about October 2, 2019 did not contain directions for use.
25. The inclusion of the language to "See Accompanying Shipping Documents for Complete Label" on the labeling when there were no such documents that provided a complete label and the absence of directions for use from the labeling constitutes "misbranding" as that term is defined at Sections 2(q)(1)(A) and (F) of FIFRA, 7 U.S.C. §§136(q)(1)(A) and (F).
26. Consequently, Respondent's import shipment of the 840 bags of "ENDORSE" through the Port of Los Angeles, California under entry number 916-40159140 on or about October 2, 2019 constitutes a violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. §136(j)(a)(1)(E), which provides that it is unlawful for any person to distribute or sell to any person a pesticide that is misbranded.

D. RESPONDENT'S ADMISSIONS

27. In accordance with 40 C.F.R. §22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in Section I.C of the CAFO; and

(v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

28. Respondent agrees to the assessment of a penalty in the amount of TEN THOUSAND, SEVEN HUNDRED AND FOURTEEN DOLLARS (\$10,714) as final settlement of the civil claims against Respondent arising under the Act as alleged in Section I.C of the CAFO.

29. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or be paid by one of the other methods listed below:

a. Regular or Certified Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

b. Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York

City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency. "

c. Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

d. ACH (also known as REX or remittance express):

US Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 — checking
Physical location of US Treasury Facility
5700 Rivertech Court
Rivertech, MD 20737
Remittance Express (REX): 1-866-234-5681

e. On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "sfo l. 1 " in the search field
Open form and complete required fields

If any clarification regarding a particular method of payment remittance is needed, please contact the EPA Cincinnati Finance Center at 513-487-2091. The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-I)
U.S. Environmental Protection Agency, Region IX

75 Hawthorne Street
San Francisco, CA 94105

Allison Watanabe
Toxics Section
Enforcement and Compliance Assurance Division (ENF-4)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

30. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
31. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph 28, then Respondent shall pay to EPA the stipulated penalty of FIVE HUNDRED DOLLARS (\$500.00) for each day the default continues, in addition to the assessed penalty upon written demand by EPA. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 29 may lead to any or all of the following actions:
 - a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
 - b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not

limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

- c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. §13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 29. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. §13.11(a)(l). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11 (c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred and will include both direct and indirect costs. 40 C.F.R. §13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

F. CERTIFICATION OF COMPLIANCE

32. In executing this CAFO, Respondent certifies that, to the best of its knowledge, it is currently in compliance with any and all FIFRA requirements that apply to its ongoing operations.

G. RETENTION OF RIGHTS

33. In accordance with 40 C.F.R. §22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violation and facts specifically alleged in Section I.C of the CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of the CAFO.
34. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

H. ATTORNEY'S FEES AND COSTS

35. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

I. EFFECTIVE DATE

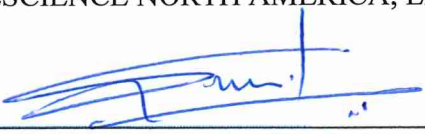
36. In accordance with 40 C.F.R. §§22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

37. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
38. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT, ARYSTA LIFESCIENCE NORTH AMERICA, LLC

2/24/2020
DATE



Sunil Menon
General Manager Operations
Arysta LifeScience North America, LLC

FOR COMPLAINANT, EPA REGION IX:

3/27/20
DATE

Matt Salazar
Manager, Toxics Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

Complainant and Respondent, Arysta LifeScience North America, LLC, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2020-~~0026~~) be entered and that Respondent shall pay a civil administrative penalty in the amount of TEN THOUSAND, SEVEN HUNDRED AND FOURTEEN DOLLARS (\$10,714) and comply with the terms and conditions set forth in the Consent Agreement.

DATE

Steven L. Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of *Arysta LifeScience North America* (FIFRA-09-2020-0026), was filed with the Regional Hearing Clerk on April 9, 2020, and a copy was served on the Respondent, and Counsel for EPA, as indicated below:

RESPONDENT

Sunil Menon,
General Manager Operations
Email: Sunil.Menon@upl-ltd.com

COUNSEL FOR EPA

Carol Bussey,
Assistant Regional Counsel
Email: Bussey.Carol@epa.gov

Date: April 9, 2020

Steven Armsey

Steven Armsey
Regional Hearing Clerk
EPA, Region 9